MANDATE

S.D.N.Y.
05-cv-6578
Buchwald, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27th day of October, two thousand and six,

Present:
Hon. Rosemary S. Pooler,
Hon. Barrington D. Parker,
*Circuit Judges.**

UNITED STATES COURT OF APPEALS
FILED
OCT 27 2006
Roseann B. MacKechnie, CLERK
SECOND CIRCUIT

Patric Kilkenny,

Plaintiff-Appellant,

v. 06-3247-cv

Greenburg Traurig LLP, Morgan Stanley, Inc., Yvonne Trimarchi, individually and as an agent of Greenburg Traurig, Karen Morita, individually and as an agent of Greenburg Traurig,

Defendants-Appellees.

This Court has determined *sua sponte* that it lacks jurisdiction over the appeal because a final order has not been issued by the district court as contemplated by 28 U.S.C. § 1291. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978) ("Federal appellate jurisdiction generally depends on the existence of a decision by the District Court that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.") (citation omitted). Moreover, the order appealed from was not certified by the District Court for interlocutory review under 28 U.S.C. §

*The Honorable Guido Calabresi was originally assigned to the panel but recused himself. This appeal is decided by the remaining members of the panel pursuant to Local Rule § 0.14(b).

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1292(b), it does not satisfy the requirements of Fed. R. Civ. P. 54(b), and it does not fall within the collateral order exception, *see Whiting v. Lacara*, 187 F.3d 317, 320 (2d Cir. 1999) (noting that to fit within the collateral order exception, the interlocutory order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment). Therefore, it is ORDERED that the appeal is DISMISSED for lack of jurisdiction. Appellant's motion to disqualify is DENIED as moot.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: *Oliva M. George*
Oliva M. George, Deputy Clerk

A TRUE COPY
Thomas W. Asreen, Acting Clerk
by *[signature]*
DEPUTY CLERK

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